

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RONALD G. LOEBER, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:04cv1193 (LEK/RFT)
)	
THOMAS J. SPARGO, et al.,)	
)	
Defendants.)	
_____)	

NOTICE OF MOTION

PLEASE TAKE NOTICE, that, upon the annexed memorandum of law, dated February 10, 2006, and upon all the pleadings and papers submitted and proceedings had thus far, defendants Alberto Gonzales, Attorney General of the United States, the United States Election Assistance Commission, and Thomas R. Wilkey, as Executive Director of the EAC, will move the Honorable Lawrence E. Kahn, United States District Judge, at the James T. Foley U.S. Courthouse, 445 Broadway, Room 424, Albany, New York, 12207, on March 17, 2006, at 9:30 a.m. in the forenoon, or as soon thereafter as counsel may be heard, for an Order, dismissing the amended complaint in so far as it seeks to bring claims against them and insofar as it seeks to challenge the constitutionality of the Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666, 42 U.S.C. 15301-15545 (2002) ("HAVA"), pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted and pursuant to Fed. R. Civ. P. 12(b)(1), for lack of jurisdiction over the subject matter based on plaintiffs' lack of standing.

Date: February 10, 2006

Respectfully submitted,

GLENN T. SUDDABY
United States Attorney

WAN J. KIM
Assistant Attorney General
Civil Rights Division

JOHN K. TANNER
Chief, Voting Section

/s/

BARBARA D. COTTRELL
Assistant United States Attorney
James T. Foley U.S. Courthouse
445 Broadway, Room 218
Albany, NY 12207-2924
(518) 431-0247 (telephone)
(518) 431-0429 (facsimile)
Bar Roll No. 101411

/s/

T. CHRISTIAN HERREN JR
chris.herren@usdoj.gov
ROBERT POPPER
robert.popper@usdoj.gov
Attorneys, Voting Section
Civil Rights Division
U.S. Department of Justice
Room 7254--NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530
(800) 253-3931 (telephone)
(202) 307-3961 (facsimile)